

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

STEVEN STARK

Plaintiff,

vs.

EASTPOINT RECOVERY GROUP, INC.

Defendant,

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) **Civil Action No.**
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VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, STEVEN STARK, by and through his attorneys, Kevin J. Buckley, Jr. of the CONSUMER RIGHTS LAW FIRM, PLLC, and for his Complaint against the Defendant, EASTPOINT RECOVERY GROUP, INC., Plaintiff states as follows:

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff, Steven Stark, an individual consumer, against Defendant, Eastpoint Recovery Group, Inc. for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337.

3. Because Defendant conducts business in Western District of New York, personal jurisdiction is established.
4. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
6. Venue in is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) in that the Defendant resides in this District pursuant to 28 U.S.C. § 1391(c).

III. PARTIES

7. Plaintiff, Steven Stark (hereinafter “Plaintiff”), is an adult individual who was at all relevant times residing in Oklahoma City, Oklahoma County, State of Oklahoma. Plaintiff now resides in Moncks Corner, Berkeley County, State of South Carolina.
8. At all relevant times, Plaintiff was a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
9. Upon information and belief the Defendant, Eastpoint Recovery Group, Inc., (hereinafter “Defendant”) is a business entity engaged in the business of collecting debt in this state and in several other states, with its principal place of business located at 26 Mississippi St., Suite 200, Buffalo, Erie County, State of New York, 14203.
10. The principal purpose of Defendant’s business is the collection of debts allegedly owed to third parties.
11. Defendant regularly collects, or attempts to collect, debts allegedly owed to third parties.

12. During the course of its efforts to collect debts allegedly owed to third parties, Defendant sends to alleged debtors, bills, statements, and/or other correspondence via the mail and/or electronic mail and initiates contact with alleged debtors via various means of telecommunication, such as telephone and facsimile.
13. At all relevant times, Defendant acted as a debt collector as that term is defined by 15 U.S.C. § 1692a(6).
14. At all relevant times, Defendant acted through its duly authorized agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

IV. FACTUAL ALLEGATIONS

15. The debt that Defendant is attempting to collect on is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
16. The alleged debt meets the definition of a “debt” under 15 U.S.C. § 1692a(5).
17. Upon information and belief, at some point the alleged debt was consigned, placed or otherwise transferred to Defendant for collection from Plaintiff.
18. Within one (1) year preceding the date of this Complaint, Defendant, in connection with the collection of the alleged debt, Defendant failed to send the required written communication to Plaintiff within the required time period.

19. Within one (1) year preceding the date of this Complaint and during the first thirty (30) days of communicating with Plaintiff, Defendant, in connection with the collection of the alleged debt, demanded payment on the alleged debt without also informing Plaintiff that Plaintiff could dispute the validity of the alleged debt and thereby overshadowed the Plaintiff's right to dispute the validity of the debt.
20. Within one (1) year preceding the date of this Complaint, Defendant, in connection with the collection of the alleged debt, contact Plaintiff by telephone and during the phone conversation Defendant did not identify that the communication was from a debt collector, that the communication was an attempt to collect a debt, nor that any information will be used for that purpose.
21. Within one (1) year preceding the date of this Complaint, Defendant, in connection with the collection of the alleged debt, contacted Plaintiff and threatened to garnish Plaintiff's wages.
22. Defendant has no standing to commence garnishment proceedings on behalf of the creditor.
23. Defendant is a debt collection company and as a debt collection company attempting to collection an alleged debt, Defendant can only refer the matter back to the creditor with a recommendation that the original creditor attempt legal proceedings which could result in garnishment.
24. The representations made to Plaintiff by Defendant regarding garnishment were false.

25. Within one (1) year preceding the date of this Complaint, Defendant, in connection with the collection of the alleged debt, contacted Plaintiff and threatened to take Plaintiff to Court.
26. Defendant has no standing to commence legal proceedings on behalf of the creditor.
27. Defendant is a debt collection company and as a debt collection company attempting to collection an alleged debt, Defendant can only refer the matter back to the creditor with a recommendation that the original creditor attempt legal proceedings.
28. The representations made to Plaintiff by Defendant regarding legal proceedings were false.
29. The natural consequences of Defendant's statements and actions was to unjustly condemn and vilify Plaintiff for his non-payment of the debt he allegedly owed.
30. The natural consequences of Defendant's statements and actions was to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.
31. Defendant utilized unfair and unconscionable means to collect on Plaintiff's alleged debt, by lying to and misleading Plaintiff and threatening to take action Defendant cannot take.

V. CAUSES OF ACTION

VIOLATIONS OF THE FDCPA- 15 U.S.C. § 1692, et seq.

32. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

33. The foregoing acts and omissions of Defendant and their agents constitute numerous and multiple violations of the FDCPA including but not limited to, each and every one of the provisions of the FDCPA, 15 U.S.C. § 1692 et seq., cited above, and below, with respect to the Plaintiff:

- (a) Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of an alleged debt; and
- (b) Defendant violated §1692e of the FDCPA by using a false, deceptive, or misleading representation or means in connection with the collection of the alleged debt; and
- (c) Defendant violated §1692e(4) of the FDCPA by giving the false representation or implication that nonpayment of the alleged debt will result in the garnishment of wages of any person when such action is unlawful and the Defendant does not intend to take such action; and
- (d) Defendant violated §1692e(5) of the FDCPA by threatening to take action that the Defendant does not intend to take and/or the Defendant cannot legally take; and
- (e) Defendant violated §1692e(11) of the FDCPA by failing to disclose in the initial communication with the Plaintiff that the Defendant is attempting to collect a debt and that any information obtained will be used for that purpose and the communication was not a formal pleading; and

- (f) Defendant violated §1692e(11) of the FDCPA by failing to disclose in a communication subsequent to the initial communication that was not a formal pleading that the communication was from a debt collector; and
- (g) Defendant violated §1692f of the FDCPA by using unfair or unconscionable means in connection with the collection of an alleged debt; and
- (h) Defendant violated §1692g(a)(1) of the FDCPA by failing to notify the Plaintiff within five days of the initial communication a written communication that including the amount of the alleged debt that the Defendant is attempting to collect; and
- (i) Defendant violated §1692g(a)(2) of the FDCPA by failing to notify the Plaintiff within five days of the initial communication a written communication that including the name of the creditor to whom the alleged debt is owed that the Defendant is attempting to collect; and
- (j) Defendant violated §1692g(a)(3) of the FDCPA by failing to notify the Plaintiff within five days of the initial communication a written communication that including a statement that unless the Plaintiff, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the Defendant; and

(k) Defendant violated §1692g(a)(4) of the FDCPA by failing to notify the Plaintiff within five days of the initial communication a written communication that including a statement that if the Plaintiff notifies the Defendant in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the Defendant will obtain verification of the debt or a copy of a judgment against the Plaintiff and a copy of such verification or judgment will be mailed to the Plaintiff by the Defendant; and

(l) Defendant violated §1692g(a)(5) of the FDCPA by failing to notify the Plaintiff within five days of the initial communication a written communication that including a statement that, upon the Plaintiff's written request within the thirty-day period, the Defendant will provide the Plaintiff with the name and address of the original creditor, if different from the current creditor; and

(m) Defendant violated §1692g(b) of the FDCPA by overshadowing or being inconsistent with the disclosure of the consumer's rights to dispute the debt or request the name and address of the original creditor.

34. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

35. As a result of the foregoing violations of the FDCPA, Defendant is liable to Plaintiff for declaratory judgment that Defendant's conduct violated the FDCPA,

actual damages pursuant to 15 U.S.C. § 1692k(a)(1), statutory damages in an amount up to one thousand dollars (\$1,000.00) pursuant to 15 U.S.C. § 1692(a)(2)(A), and reasonable costs and attorney fees pursuant to 15 U.S.C. 15 § 1692k(a)(3), from Defendant herein.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant for the following:

- A. Declaratory judgment Defendant's conduct violated the FDCPA.
- B. Actual damages from Defendant pursuant to 15 U.S.C. § 1692k(a)(1) for the emotional distress suffered as a result of the intentional and/or negligent FDCPA violations, and from Defendant for intentional and/or negligent invasion of privacy in an amount to be determined at trial.
- C. Statutory damages of \$1,000.00 from Defendant pursuant to 15 U.S.C. § 1692k(a)(2)(A).
- D. Costs and reasonable attorney fees from each Defendant and for Plaintiff pursuant to 15 U.S.C. § 1692k(a)(3).
- E. Punitive damages in such amount as is found appropriate.
- F. For Such other and further relief as the Court may deem just and proper.

VII. DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, Steven Stark, demands trial by jury in this action on all issues so triable. US Const. amend 7. Fed.R.Civ.P. 38.

RESPECTFULLY SUBMITTED,

Steven Stark
By his counsel,

Dated: October 3, 2019

/s/Kevin J. Buckley, Jr.
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